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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 OCEAN SW, INC., *et al.*,

13 Plaintiffs,

14
15 v.

16 CANAM PET TREATS, INC.

17 Defendant.
18
19

Case No. 14-cv-2059-BAS(KSC)

**ORDER GRANTING
DEFENDANT'S MOTION TO
TRANSFER OR DISMISS FOR
LACK OF PERSONAL
JURISDICTION**

[ECF No. 2]

20 On July 16, 2014, Plaintiffs Ocean SW, Inc. ("Ocean") and U.S. Pet Nutrition,
21 LLC ("USPN") commenced this action in the San Diego Superior Court, asserting
22 claims for breach of contract and unjust enrichment against Defendant CanAm Pet
23 Treats, Inc. ("CanAm"). Thereafter, CanAm removed this action to federal court on
24 the basis of diversity. CanAm now moves to dismiss under Federal Rule of Civil
25 Procedure 12(b)(2) or alternatively, to transfer to the Western District of Missouri.
26 Ocean and USPN oppose.

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1 The Court finds this motion suitable for determination on the papers submitted
2 and without oral argument. *See* Civ. L.R. 7.1(d)(1). For the following reasons, the
3 Court **GRANTS** CanAm’s motion to dismiss for lack of personal jurisdiction and
4 transfer venue.

5
6 **I. BACKGROUND¹**

7 CanAm is a Canadian company that “manufactures and distributes pet treats that
8 are sold throughout Canada and the United States.” (Connolly Decl. ¶ 2.) Its principal
9 place of business and corporate offices are located in British Columbia, Canada, though
10 it has a manufacturing facility that houses its United States corporate offices in Milan,
11 Missouri. (*Id.*) According to Brian Connolly—CanAm’s Chief Executive
12 Officer—CanAm does not have any offices, facilities, or employees in California. (*Id.*
13 ¶¶ 1, 3.) Ocean is a California corporation and USPN is a California limited liability
14 company, each with their respective principal places of business in San Diego,
15 California. (Compl. ¶¶ 3–4.)

16 The chain of events leading to this action began when Darford International, Inc.
17 (“Darford” or “Darford International”) went into receivership sometime in 2012. (*See*
18 Chan Decl. ¶ 4; Connolly Decl. ¶ 4.) Darford was a Canadian company “in the
19 business of manufacturing and distributing pet treats throughout North America.”
20 (Connolly Decl. ¶ 4.) Both Ocean and USPN were investors in Darford, and USPN
21 was also a distributor for Darford in the United States. (*Id.*; Chan Decl. ¶ 4.)

22 However, Darford began “experiencing financial difficulties and went into
23 receivership.” (Connolly Decl. ¶ 5.) The receivership “occurred in British Columbia
24 and was governed by the laws of British Columbia, with the receiver located in
25 Vancouver, B.C.” (*Id.*) Enter CanAm, a company that was “created to, and ultimately
26 did, purchase certain of the assets of Darford as a part of a liquidation plan approved

27
28 ¹ Ocean and USPN filed evidentiary objections to portions of and documents attached to the
Connolly Declaration. The Court notes the objections, but **OVERRULES** them for the purposes of
this order.

1 by the court in British Columbia.” (*Id.*) As a part of the receivership and in connection
2 with its purchase of Darford assets, CanAm—directly and through its wholly-owned
3 subsidiary, Darford Holding Company, Inc. (“DHC” or “Darford Holding”)—entered
4 into several agreements with Ocean and USPN, including a distribution agreement with
5 USPN, a sub-lease with USPN, and a promissory note with Ocean. (Connolly Decl.
6 ¶ 6, Exs. 1–3.) These agreements were purportedly “all part of an overall agreement
7 between CanAm (as the Darford asset purchaser) and USPN/Ocean SW (as the former
8 distributor for and investors in Darford).” (Connolly Decl. ¶ 6.)

9 CanAm describes the distribution agreement as “stat[ing] that the parties were
10 entering into the agreement in part because CanAm agreed to recognize prior
11 indebtedness owed to Ocean SW by Darford[,]” and that they “agreed and understood
12 that CanAm would be voluntary [sic] undertaking to repay a debt to Ocean SW that
13 CanAm was not obligated to pay.” (Connolly Decl. ¶ 7.) With that understanding, in
14 October 2012, CanAm and Ocean entered into a promissory note requiring CanAm to
15 repay Ocean in the amount of \$1,050,000 plus interest by the maturity date. (*Id.*;
16 Compl. ¶ 10; *see also* Connolly Decl. Ex. 2.) The promissory note states that it “shall
17 be construed and enforceable under and in accordance with the laws of British
18 Columbia and the laws of Canada applicable therein.” (Connolly Decl. Ex. 2; *see also*
19 Compl. ¶ 10.) CanAm used the proceeds from the note to “acquire all or substantially
20 all of the assets of Darford . . . including the Darford brand name.” (Chan Decl. ¶ 2.)
21 Ocean and USPN allege that CanAm repudiated the note in June 2014, which was
22 “accepted” in accordance with British of Columbia and Canadian laws. (Compl. ¶¶
23 12–13.) Ocean and USPN allege that “[t]o date . . . CanAm has not repaid *any*
24 principal or interest to Ocean on the USD \$1,050,000 promissory note.” (Compl. ¶¶
25 11, 18 (emphasis added).)

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1 CanAm also allegedly “agreed to repay debts owed to USPN . . . including those
2 invoiced to or incurred by an entity called Darford, in exchange for good and valuable
3 consideration.” (Compl. ¶ 14.) CanAm purportedly “made repeated verbal and written
4 agreements, assurances and affirmations to USPN in California that Canam would
5 repay debts, including debts of both Darford International and Darford Holding, owed
6 to USPN[.]” (Chan Decl. ¶ 3.) The debts owed to USPN allegedly include
7 \$519,165.86, \$129,165.86, other debts and expenses, and interest.” (Compl. ¶ 14.)
8 Shue Wing Chan—a director for USPN and president of Ocean—adds that “John
9 Phelps, an officer of USPN at the time, hosted conference calls with Canam regarding
10 such repayments” and that Mr. Phelps “was acting in his official capacity as an officer
11 for USPN” even though he was also a director for CanAm. (Chan Decl. ¶ 3.) Ocean
12 and USPN allege that CanAm has not paid the outstanding debt owed to USPN.²
13 (Compl. ¶¶ 16, 30.)

14 On July 16, 2014, Ocean and USPN commenced this action against CanAm in
15 the San Diego Superior Court, asserting two claims for breach of contract and one for
16 unjust enrichment. Because the complaint was not served on CanAm until August 5,
17 2014, CanAm removed this action to federal court on September 2, 2014. (Removal
18 Notice ¶ 2.)

19 On October 6, 2014, CanAm commenced an action in the Western District of
20 Missouri (“Missouri Action”) against Ocean and USPN. (Related Case Notice 1:4–18.)
21 The Missouri Action complaint indicates that CanAm is asserting breach-of-contract
22 claims related to the “overall agreement” and distribution agreement previously
23 mentioned. (Related Case Notice Ex. A.)

24 CanAm now moves to dismiss for lack of personal jurisdiction or alternatively,
25 transfer venue to the Western District of Missouri. Ocean and USPN oppose.

26 ² It is not entirely clear if the agreement allegedly breached by CanAm with respect to USPN
27 is the distribution agreement, sublease agreement, employee-sharing arrangement, or some other
28 agreement or collection of agreements. At the very least, it appears that the relevant USPN-CanAm
agreements required CanAm to repay a certain sum of money to USPN, which allegedly remains
unpaid.

II. LEGAL STANDARD

When the parties dispute whether personal jurisdiction over a foreign defendant is proper, “the plaintiff bears the burden of establishing that jurisdiction exists.” *Rios Props. Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). In ruling on the motion, the “court may consider evidence presented in affidavits to assist in its determination and may order discovery on the jurisdictional issues.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Where the motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make “a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Bryton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 985 (9th Cir. 2009). “In determining whether the plaintiff has met this burden, the Court must take the allegations in the plaintiff’s complaint as true and resolve the disputed jurisdictional facts in the plaintiff’s favor.” *Nissan Motor Co., Ltd. v. Nissan Computer Corp.*, 89 F. Supp. 2d 1154, 1158 (C.D. Cal. 2000) (citing *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995)). A prima facie showing means that “the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant.” *Unocal*, 248 F.3d at 922.

“The general rule is that personal jurisdiction over a defendant is proper if it is permitted by a long-arm statute and if the exercise of that jurisdiction does not violate federal due process.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Both the California and federal long-arm statutes require compliance with due-process requirements. *Daimler AG v. Bauman*, — U.S. —, 135 S. Ct. 746, 753 (2014); *see also* Fed. R. Civ. P. 4(k)(2); *Holland Am. Line Inc. v. Wärtsilä N. Am., Inc.*, 485 F.3d 150, 161 (9th Cir. 2007); *Pebble Beach*, 453 F.3d at 1155.

There are two types of personal jurisdiction: general and specific. *See Daimler AG*, 135 S. Ct. at 754-55. “Since *International Shoe*, ‘specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role.’” *Daimler AG*, 134 S. Ct. at 755 (quoting *Goodyear Dunlop Tires*

1 *Operations, S.A. v. Brown*, — U.S. —, 131 S. Ct. 2846, 2854 (2011)). General
2 jurisdiction “enables a court to hear cases unrelated to the defendant’s forum
3 activities[.]” *Fields v. Sedgewick Assoc. Risks, Ltd.*, 796 F.2d 299, 301 (9th Cir. 1986).
4 Specific jurisdiction allows the court to exercise jurisdiction over a defendant whose
5 forum-related activities gave rise to the action before the court. *See Bancroft &*
6 *Masters, Inc. v. August Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000).

8 **III. DISCUSSION**

9 CanAm contends this Court has neither general nor specific jurisdiction over it.
10 (Def.’s Mot. 7:16–26.) Ocean and USPN respond that CanAm’s contacts with
11 California are sufficient to confer both general and specific jurisdiction. (Pls.’ Opp’n
12 2:23–24, 7:18–27.)

13 Both parties submit additional materials to support their positions. CanAm
14 submits the Connolly Declaration with its various exhibits, which include copies of the
15 distribution agreement, promissory note, sublease agreement, master lease, and June
16 2014 repudiation letter. (ECF No. 2-2.) Ocean and USPN submit the Chan Declaration
17 and various screen shots and print outs related to CanAm’s purported business dealings
18 in California. (ECF Nos. 4-2, 4-3.)

20 **A. General Jurisdiction**

21 “A court may assert general jurisdiction over foreign (sister-state or foreign-
22 country) corporations to hear any and all claims against them when their affiliations
23 with the State are so ‘continuous and systematic’ as to render them essentially at home
24 in the forum State.” *Goodyear*, 131 S. Ct. at 2851 (citing *International Shoe Co v.*
25 *Washington*, 326 U.S. 310, 317 (1945)). “With respect to a corporation, the place of
26 incorporation and principal place of business are ‘paradig[m] . . . bases for general
27 jurisdiction.’” *Daimler AG*, 134 S. Ct. at 760 (quoting *Goodyear*, 131 S. Ct. at 2853-
28 54). “These bases afford plaintiffs recourse to at least one clear and certain forum in

1 which a corporate defendant may be sued on any and all claims.” *Id.*

2 In assessing the substantiality of a defendant’s contacts with a state, courts
3 examine the “[l]ongevity, continuity, volume, [and] economic impact” of those
4 contacts, as well as the defendant’s “physical presence . . . and integration into the
5 state’s regulatory and economic markets.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*,
6 647 F.3d 1218, 1224 (9th Cir. 2011). A corporation’s “continuous activity of some
7 sorts within a state is not enough to support the demand that the corporation be
8 amenable to suits unrelated to that activity.” *International Shoe*, 326 U.S. at 318.
9 “Although the placement of a product into the stream of commerce ‘may bolster an
10 affiliation germane to *specific* jurisdiction,’ [the Supreme Court has] explained, such
11 contacts ‘do not warrant a determination that, based on those ties, the forum has
12 *general* jurisdiction over a defendant.” *Daimler AG*, 134 S. Ct. at 757 (citing
13 *Goodyear*, 131 S. Ct. at 2857).

14 In support of their position that the Court may exercise general jurisdiction over
15 CanAm, Ocean and USPN provide various facts that generally fall into three
16 categories: (1) the marketing and sales of CanAm’s pet-treat products in California; (2)
17 the negotiations and execution of the promissory note; and (3) CanAm’s parent-
18 subsidiary relationship with DHC. None of these facts, individually or in combination,
19 support exercising general jurisdiction over CanAm.

20 For the circumstances of this case, *Bancroft & Masters, Inc. v. Augusta National*
21 *Inc.*, 223 F.3d 1082 (9th Cir. 2000), and *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d
22 1072 (9th Cir. 2003), are instructive. In *Bancroft*, the Ninth Circuit affirmed the lower
23 court finding general jurisdiction lacking because the defendant’s “contacts [did] not
24 qualify as either substantial or continuous and systematic.” *Bancroft*, 223 F.3d at 1086.
25 The court identified numerous facts that supported its determination: the defendant was
26 not registered or licensed to do business in California; it did not pay taxes or maintain
27 bank accounts in California; the defendant did not target print, television, or radio
28 advertising toward California; and its website was “passive,” lacking the capability of

1 allowing consumers to purchase products. *Id.* The Ninth Circuit also recognized that
2 the defendant's license agreements with two television networks and a "handful of
3 California vendors" constituted "doing business with California, but [did] not
4 constitute doing business in California." *Id.* (citing *Helicopteros Nacionales de*
5 *Columbia, S.A. v. Hall*, 466 U.S. 408, 418 (1984)).

6 In contrast, *Gator.Com* presented a "close question" with respect to the presence
7 of general jurisdiction. Though the defendant in *Gator.Com* lacked the traditional
8 bases for general jurisdiction, the Ninth Circuit nonetheless found that general
9 jurisdiction existed in light of the defendant's "extensive marketing and sales in
10 California, its extensive contacts with California vendors, and the fact that . . . its
11 website is clearly and deliberately structured to operate as a sophisticated virtual store
12 in California." *Gator.Com*, 341 F.3d at 1078. Despite the fact that the defendant did
13 not pay taxes or maintain an agent for the service of process in California, and its
14 California sales amounted to 6 percent of the company's revenue, the factors favoring
15 general jurisdiction included: selling "millions of dollars worth of products" in
16 California; soliciting California residents directly through email; purchasing products
17 from "numerous California vendors"; maintaining a "highly interactive" website
18 through which California consumers made purchases and communicated with sales
19 representatives; and conducting "national print and broadcasting marketing efforts" that
20 encompassed California. *Id.* at 1074, 1078.

21 CanAm lacks the traditional hallmarks of being "at home" in California. It is
22 neither incorporated nor registered as a business in California. Nor does CanAm claim
23 California as its principal place of business. Furthermore, Ocean and USPN fail to
24 present facts demonstrating a physical presence in California by CanAm, such as
25 owning property, paying taxes, or maintaining bank accounts, beyond its affiliation to
26 DHC. The only possible facts showing a physical presence appear to exist through
27 third parties, such as distribution agreement with USPN and DHC's employee-sharing
28 arrangement with USPN, but this is insufficient to establish CanAm's presence in

1 California. *See Dynamic Software Servs. v. Cyberbest Tech., Inc.*, No. C-13-04217,
2 2014 WL 3373924, at *5 (N.D. Cal. July 9, 2014). Further departing from the
3 circumstances of *Gator.Com*, there are no facts presented that address CanAm’s
4 business volume or economic impact in California, or any solicitation of business from
5 California residents beyond a passive website. *See Gator.Com*, 341 F.3d at 1078.

6 A point of emphasis also appears to be centered on CanAm’s purported
7 “interactive website directed to California customers.” (Arouh Decl. ¶ 6, Ex. E.)
8 Ocean and USPN demonstrate that there is some level of interaction between those
9 accessing the website and the website operators, but the interaction appears to be
10 limited to subscribing to emails and asking “questions about this list.” (Arouh Decl.
11 Ex. E.) Upon closer inspection, it appears that neither CanAm nor DHC directly sell
12 to consumers in California. For example, in order to purchase CanAm’s pet-treat
13 products online, consumers are directed to Pet Best Inc. (Arouh Decl. Ex. C.) The
14 screen shot of CanAm’s website provides another example that CanAm does not
15 directly sell or advertise to California consumers as there are no apparent links on the
16 website screen shots to product purchases or online “shopping carts.” (*See* Arouh Decl.
17 Ex. B.) The evidence presented demonstrates that consumers must turn to third parties
18 in order to purchase CanAm’s pet-treat products.

19 There is no evidence before this Court of any print, television, or radio
20 advertising directed at California. *See Bancroft*, 223 F.3d at 1086. Rather, the only
21 marketing and selling “into” California appears to be through CanAm’s website,
22 www.darford.com. But the mere maintenance of an interactive website—which in this
23 case is more passive than a sophisticated virtual store—is insufficient to support
24 general jurisdiction over a foreign defendant, even if residents of the forum state visit
25 the website and make purchases through it. *See CollegeSource, Inc. v. AcademyOne,*
26 *Inc.*, 653 F.3d 1066, 1075-76 (9th Cir. 2011) (“If the maintenance of an interactive
27 website were sufficient to support general jurisdiction in every forum in which users
28 interacted with the website, ‘the eventual demise of all restrictions on the personal

1 jurisdiction of state courts’ would be the inevitable result.”); *Gator.Com*, 341 F.3d at
2 1078.

3 The negotiations and execution of the promissory note also fails to support
4 finding general jurisdiction. Though Ocean and USPN mention the facts surrounding
5 the negotiations and execution to support the argument that general jurisdiction exists,
6 they fail to provide any explanation linking these facts to the requirements for general
7 jurisdiction. Needless to say, the general facts related to actions leading up to the
8 promissory note are neither continuous nor systematic, and they certainly do not render
9 CanAm as essentially “at home” in California. *See Goodyear*, 131 S. Ct. at 2851.
10 Though not argued, the same applies to the agreements with USPN, where the facts
11 describing any negotiations are non-existent. *See id.*

12 Finally, Ocean and USPN present an agency theory that DHC’s conduct may be
13 imputed to CanAm. (Pls.’ Opp’n 7:1–16.) In requesting jurisdictional discovery,
14 Ocean and USPN implicitly concede that this theory is currently inadequate to make
15 a prima facie showing supporting general jurisdiction. (*See id.*) “The agency test is
16 satisfied by a showing that the subsidiary functions as the parent corporation’s
17 representative in that it performs services that are ‘sufficiently important to the foreign
18 corporation that if it did not have a representative to perform them, the corporation’s
19 own officials would undertake to perform substantially similar services.’” *Unocal*, 248
20 F.3d at 928. The Court agrees with that concession that there are no facts presented
21 satisfying the requirements of the agency theory. It is unclear what DHC activities in
22 California amount to making it something more than a mere subsidiary of CanAm.³

23 In sum, even viewing disputed jurisdictional facts in favor of Ocean and USPN,
24

25 ³ It is worth noting that in *Daimler AG*, the Supreme Court criticized the Ninth Circuit agency
26 theory’s inquiry into “importance” as “stack[ing] the deck” in a manner that “will always yield a pro-
27 jurisdiction answer,” effectively “subject[ing] foreign corporations to general jurisdiction whenever
28 they have an in-state subsidiary or affiliate[.]” *Daimler AG*, 134 S. Ct. at 759-60. The Supreme Court
expressed concern that the outcome of this theory “would sweep beyond even the ‘sprawling view of
general jurisdiction’ . . . rejected in *Goodyear*.” *Id.* (citing *Goodyear*, 131 S. Ct. at 2856).

1 the Court finds that they fail to establish a prima facie showing that general jurisdiction
2 over CanAm exists. The circumstances simply do not suggest that CanAm is
3 “essentially at home” in California. *See Goodyear*, 131 S. Ct. at 2851.

4 5 **B. Specific Jurisdiction**

6 The Ninth Circuit employs a three-part test to determine whether the defendant’s
7 contacts with the forum state are sufficient to subject it to specific jurisdiction. *Ballard*
8 *v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Under the three-part inquiry, specific
9 jurisdiction exists only if: (1) the out-of-state defendant purposefully availed itself of
10 the privilege of conducting activities in the forum, thereby invoking the benefits and
11 protections of the forum’s laws; (2) the cause of action arose out of the defendant’s
12 forum-related activities; and (3) the exercise of jurisdiction is reasonable. *Myers v.*
13 *Bennett Law Offices*, 238 F.3d 1068, 1072 (9th Cir. 2001).

14 The plaintiff bears the burden of satisfying the first two prongs of this specific-
15 jurisdiction test. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th
16 Cir. 2004). “If the plaintiff succeeds in satisfying both of the first two prongs, the
17 burden then shifts to the defendant to ‘present a compelling case’ that the exercise of
18 jurisdiction would not be reasonable.” *Id.* “If any of the three requirements is not
19 satisfied, jurisdiction in the forum would deprive the defendant of due process of law.”
20 *Pebble Beach*, 453 F.3d at 1155.

21 Furthermore, “[s]pecific personal jurisdiction requires a showing of forum-
22 related activities of the defendant that are related to the claim asserted.” *Carpenter v.*
23 *Sikorsky Aircraft Corp.*, — F. Supp. 3d —, 2015 WL 1893146, at *6 (C.D. Cal. 2015)
24 (citing *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 588 (9th Cir. 1993)). It is “confined to
25 adjudication of issues deriving from, or connected with, the very controversy that
26 establishes jurisdiction.” *Goodyear*, 131 S. Ct. at 2851 (internal quotation marks
27 omitted).

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1 “An out-of-state party does not purposefully avail itself of a forum merely by
2 entering into a contract with a forum resident.” *HK China Grp., Inc. v. Beijing United*
3 *Auto & Motorcycle Mfg. Corp.*, 417 F. App’x 664, 665 (9th Cir. 2011) (citing *Burger*
4 *King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985)); *see also Roth v. Garcia Marquez*,
5 942 F.2d 617, 621 (9th Cir. 1991) (“[T]he existence of a contract with a resident of the
6 forum state is insufficient by itself to create personal jurisdiction over the
7 nonresident.”). “Rather, there must be actions by the defendant himself that create a
8 ‘substantial connection’ with the forum State.” *Picot v. Weston*, 780 F.3d 1206, 1212
9 (9th Cir. 2015) (internal quotation marks and emphasis omitted). Merely “random,
10 fortuitous, or attenuated” contacts are not sufficient. *Burger King*, 471 U.S. at 475
11 (internal quotation marks omitted).

12 When the exercise of personal jurisdiction over a defendant is based on the
13 execution or performance of a contract, the court must “use a highly realistic approach
14 that recognizes that a contract is ordinarily but an intermediate step serving to tip up
15 prior business negotiations with future consequences which themselves are the real
16 object of the business transaction.” *Burger King*, 471 U.S. at 479 (internal quotation
17 marks and citation omitted); *see also Schwarzenegger*, 374 F.3d at 802 (“The
18 appropriate analysis for a suit ‘sounding in contract’ focuses on the presence of
19 ‘purposeful availment.’”). Accordingly, to determine whether a party to a contract has
20 purposefully established the requisite minimum contacts with the forum, a court should
21 look at four factors: (1) prior negotiations; (2) contemplated future consequences; (3)
22 the terms of the contract; and (4) the parties’ actual course of dealings. *Burger King*,
23 471 U.S. at 479. More specifically, “[t]o have purposefully availed itself of the
24 privilege of doing business in the forum, a defendant must have ‘performed some type
25 of affirmative conduct which allows or promotes the transaction of business within the
26 forum state.’” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008); *see also*
27 *Sinatra v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988).

28 //

1 Ocean and USPN identify eleven facts, some relevant and many not, that they
2 contend support the proposition that CanAm purposefully availed itself to California.
3 (Pls.' Opp'n 9:2–22.) The relevant facts identified include the parties to the
4 agreements at issue, the purpose of the promissory note, and the correspondences
5 between the parties prior to entering into the relevant agreements. But to keep
6 perspective, it is important to emphasize that the claims asserted in this action relate to
7 the breach of contractual agreements to *repay debts*. The debts allegedly owed to
8 Ocean arise out of the promissory note; and the debts allegedly owed to USPN arise out
9 of “verbal and written agreements,” the terms of these agreements having not been
10 disclosed in any detail to the Court. (Compl. ¶¶ 18, 28.) Consequently, the exercise
11 of specific jurisdiction must derive from or connect with the breach of these agreements
12 to repay debts. *See Goodyear*, 131 S. Ct. at 2851 (“[S]pecific jurisdiction is confined
13 to adjudication of ‘issues deriving from, or connected with, the very controversy that
14 establishes jurisdiction.’”)

15 Ocean and USPN repeatedly mention the marketing and sales of CanAm’s pet-
16 treat products in California and other incidental agreements as considerations that
17 contribute to the specific-jurisdiction analysis. (Pls.' Opp'n 9:2–22, 10:9–11:23.)
18 However, the causes of action in this case do not derive from or connect with the
19 marketing and sales of CanAm’s pet-treat products or the other incidental agreements.
20 The controversy in this case is CanAm’s alleged failure to repay debts owed to Ocean
21 through the promissory note and USPN through unspecified “written and verbal
22 agreements.” Neither party presents facts suggesting that CanAm’s pet-treat products,
23 which are apparently manufactured and distributed by the non-party subsidiary DHC,
24 relate to the debts allegedly owed. In short, the marketing and sales of CanAm’s pet-
25 treat products in California and the other incidental agreements⁴—individually or
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27 ⁴ For example, the distribution, sublease, and lease agreements submitted with the Connolly
28 Declaration. (See Connolly Decl. Exs. 1, 3, 4.)

1 through DHC—are not relevant to the specific-jurisdiction analysis within the
2 boundaries of the causes of action asserted in this case to recover allegedly outstanding
3 debts.⁵ *See Goodyear*, 131 S. Ct. at 2851; *see also Holland*, 485 F.3d at 459 (“The
4 placement of a product into the stream of commerce, without more, is not an act
5 purposefully directed toward a forum state.”); *Brainerd v. Governors of the Univ. of*
6 *Alberta*, 873 F.2d 1257, 1259 (9th Cir. 1989) (rejecting exercise of specific jurisdiction
7 in instances where defendant’s contacts are “attenuated” or are “based upon the
8 unilateral activities of . . . third parties”).

9 Turning to the relevant facts provided to the Court, it warrants repeating that the
10 causes of action asserted are for the repayment of debts. (Compl. ¶ 10 (“CanAm agreed
11 to repay Ocean the amount of USD \$1,050,00[.]”); Compl. ¶ 14 (“CanAm also agreed
12 to repay debts owed to USPN . . . including but not limited to \$519,516.86,
13 \$129,165.86[.]”).) A copy of the promissory note between Ocean and CanAm was
14 provided (Connolly Decl. Ex. 2), but the terms of the agreements between USPN and
15 CanAm beyond the repayment of debts have not been provided (Chan Decl. ¶ 3). There
16 is no evidence as to who reached out to whom to initiate these contractual relationships.
17 There is also no evidence where the contracts were signed or otherwise executed,
18 though the promissory note does contain a choice-of-law provision requiring the
19 application of British of Columbia and Canadian laws. (Connolly Decl. Ex. 2; Compl
20 ¶ 10.)

21 Addressing the agreements between USPN and CanAm first, no facts are
22 provided describing the prior negotiations, including where negotiations took place,
23 leading to the formation of the “repeated verbal and written agreements, assurances and
24 affirmations” or the parties’ actual course of dealings. (*See* Chan Decl. ¶ 3.) The only

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26 ⁵ Ocean and USPN may be asserting a “stream of commerce” theory to establish specific
27 jurisdiction, but that theory applies to the “purposeful direction” test for claims sounding in tort. *See*
28 *Picot*, 780 F.3d at 1212; *Holland*, 485 F.3d at 459. Because there are no claims sounding in tort
asserted here, the Court rejects the stream-of-commerce theory insofar as Ocean and USPN assert it.
See id.

1 term of the agreements known is that CanAm was allegedly obligated to repay debts
2 in the amount of “\$519,165.86, \$129,165.86, plus other debts and expenses, plus
3 interest.” (*See* Compl. ¶ 14.) In fact, there is no evidence describing what
4 consideration USPN received from CanAm in exchange for its promise to repay certain
5 debts. Without knowing the terms of the agreements, it is difficult to determine what
6 the contemplated future consequences were beyond the expectation that CanAm repay
7 any debts allegedly owed. With respect to USPN, that only leaves the allegations
8 CanAm entered into contracts with a California company, USPN, to repay certain
9 debts.

10 The parties provide more information related to the promissory note, including
11 a copy of the agreement itself. Prior negotiations between Ocean and CanAm included
12 “telephone calls, computer meetings and/or emails.” (Chan Decl. ¶ 2.) Though Ocean
13 and USPN contend that these negotiations “occurred, at least, in part in California,”
14 that is not clear from the facts presented in the complaint and the supporting evidence
15 submitted by the parties. (*See id.*) There is evidence, however, that the \$1,050,000
16 loaned to CanAm was used to “acquire all or substantially all of the assets of Darford
17 International, Inc. (“Darford International”), including the Darford brand name” (Chan
18 Decl. ¶ 2), Darford having been “a company existing and organized under the laws of
19 British Columbia, Canada” (Connolly Decl. ¶ 4). The promissory note itself does not
20 contain a forum-selection clause, but it does contain a choice-of-law provision stating
21 that the terms “shall be construed and enforceable under and in accordance with the
22 laws of British Columbia and the laws of Canada applicable therein.” (Connolly Decl.
23 Ex. 2; *see also* Compl. ¶ 10.) To summarize, after negotiating over long distance,
24 Ocean and CanAm entered into the promissory note so that CanAm could acquire
25 assets of a Canadian company, Darford. The only continued contact with Ocean
26 appears to have been the expectation that CanAm transmit the sum of money owed by
27 the “maturity date.” (Connolly Decl. Ex. 2.)

28 //

1 Ocean and USPN give the impression—whether intentionally or not—that there
2 was an active, ongoing relationship with CanAm under the promissory note whereby
3 CanAm transmitted payments to Ocean throughout the duration of 36 months. (Pls.’
4 Opp’n 9:3–4.) But reading the complaint more closely, Ocean and USPN allege that
5 “[t]o date . . . CanAm has not repaid *any* principal or interest to Ocean on the USD
6 \$1,050,000 promissory note.” (Compl. ¶ 18 (emphasis added).) That allegation is
7 consistent with the language in the promissory note, which states that “the Debtor
8 [CanAm] shall repay the Principal Sum [of \$1,050,000] and any accrued and unpaid
9 interest before 2:00 p.m., pacific daylight time, on the Maturity Date.” (Connolly Decl.
10 Ex. 2; *see also* Compl. ¶ 10 (“CanAm agreed to pay Ocean . . . by the maturity date set
11 forth in the promissory note.”).) The maturity date was a single date specified by the
12 parties set in October 2015. (Connolly Decl. Ex. 2; *see also* Compl. ¶ 10 (“The
13 maturity date in the note is the date which is ‘36 months from the date of this Term
14 Promissory Note.’”)). CanAm was given the option to submit prepayments towards
15 repaying the principal under the terms of the promissory note, but it apparently never
16 exercised that right. (Connolly Decl. Ex. 2; Compl. ¶¶ 10, 18.) Based on the
17 information before the Court, the only additional transaction under the promissory note
18 was the expected transmission of the single payment from CanAm to Ocean by the
19 maturity date. (*See* Connolly Decl. Ex. 2; Compl. ¶¶ 10, 18.)

20 The contracts at issue in this case—particularly, the promissory note—were
21 “discrete encounters” without any ongoing obligations in California beyond repaying
22 the debts allegedly owed. *See Azzarello v. Navagility*, No. C-08-2371, 2008 WL
23 4614667, at *3 (N.D. Cal. Oct. 16, 2008); *see also Boschetto*, 539 F.3d at 1017. With
24 respect to the agreements with USPN, merely entering into contracts with a California
25 company and awaiting a payment on the debts owed are insufficient to establish
26 specific jurisdiction. *See Boschetto*, 539 F.3d at 1017 (“[A] contract alone does not
27 automatically establish minimum contacts in the plaintiff’s home forum.”); *see also*
28 *Burger King*, 471 U.S. at 478 (finding that an individual’s contact with an out-of-state

1 party alone cannot automatically establish sufficient minimum contacts in the other
2 party's home forum). It is important to highlight that no other facts, either through the
3 complaint or supporting evidence, are provided regarding the agreements with USPN.

4 The promissory note with Ocean presents circumstances strikingly similar to
5 those in *Azzarello*. In *Azzarello*, the court found that the defendant had not
6 purposefully availed itself of conducting business in California, though it had received
7 a \$300,000 bridge loan from the plaintiff, a California resident, in response to an email
8 solicitation. 2008 WL 4614667, at *1, *5. The loan was to be repaid in a "single
9 balloon payment" equivalent to two times the principal investment. *Azzarello*, 2008
10 WL 4614667, at *1. The defendant had procured the loan to fund business operations
11 in New York. *Id.* at *3. While the court found that the defendant's solicitation of the
12 loan weighed in favor of finding purposeful availment, it reasoned that this fact alone
13 was not sufficient to establish it. *Id.* The court likewise found that neither the
14 defendant's knowledge that the plaintiff was based in California nor the fact that the
15 defendant communicated via email with the plaintiff were sufficient to establish
16 purposeful availment. *Id.* Instead, the court rested its holding on the fact that the
17 transaction was a "discrete encounter," contemplating no further action by either party.
18 *Id.* The court further reasoned that the contract would not have any effect in the forum
19 state, given that the loan was intended to fund operations in New York, another fact
20 that weighed against a finding of purposeful availment. *Id.*

21 Like *Azzarello*, CanAm entered into the promissory note with Ocean to procure
22 capital to facilitate its acquisition of a Canadian company, Darford. Other similarities
23 to *Azzarello* include the expected single payment to repay the debt as well as various
24 long-distance communications prior to executing the loan agreement. The significant
25 difference though is the defendant in *Azzarello* reached out and solicited the contractual
26 relationship with the plaintiff, but there are no facts before this Court that CanAm
27 initiated the contractual relationship with Ocean. See *Azzarello*, 2008 WL 4614667,
28 at *1, *5. Furthermore, there are no facts suggesting the promissory note will have any

1 effect in California. *See id.* Comparing the *Azzarello* defendant to CanAm, the latter
2 has fewer factors weighing in favor of finding purposeful availment. Consequently,
3 applying much of the same reasoning from *Azzarello* to the circumstances of this case,
4 CanAm did not purposefully avail itself of conducting business in California through
5 the promissory note. *See id.*; *see also Fed. Deposit Ins. Corp. v. British-American Ins.*
6 *Co., Ltd.*, 828 F.2d 1439, 1443 (9th Cir. 1987) (“This circuit has recognized that the
7 receipt of payment alone for services rendered outside the forum state is not sufficient
8 to support personal jurisdiction.”).

9 Each of the minimum-contacts factors either weigh against finding specific
10 jurisdiction over CanAm, or Ocean and USPN fail to provide detailed facts to find
11 otherwise. *See Burger King*, 471 U.S. at 479. Details regarding prior negotiations
12 were not provided; stating there were “telephone calls, computer meetings and/or
13 emails regarding the promissory note” is insufficient (*see* Chan Decl. ¶ 2). Beyond the
14 expectation that CanAm would repay the debts allegedly owed, there are no details
15 describing any other contemplated future consequences inside or outside of California.
16 The terms of the promissory note exclusively establish a debtor-lender relationship, but
17 include a choice-of-law provision indicating that British of Columbia and Canadian law
18 apply to the contract; the terms of the agreements with USPN were not disclosed.
19 Lastly, neither plaintiffs present details describing their course of dealings with CanAm
20 that are relevant to the causes of action asserted in this case.

21 Accordingly, Ocean and USPN fail to establish a *prima facie* showing
22 demonstrating that CanAm purposefully availed itself of the privilege of conducting
23 activities in California and invoking the benefits and protections of California law. *See*
24 *Schwarzenegger*, 374 F.3d at 802; *Myers*, 238 F.3d at 1072; *see also Burger King*, 471
25 U.S. at 479; *Boschetto*, 539 F.3d at 1016 (“[I]f the plaintiff fails at the first step [of the
26 specific-jurisdiction analysis], the jurisdictional inquiry ends and the case must be
27 dismissed.”).

28 //

1 **C. Venue**

2 “A district court has authority to transfer a case over which it lacks jurisdiction.”
3 *Carpenter*, 2015 WL 1893146, at *6 (citing 28 U.S.C. §§ 1404(a), 1406(a), 1631).
4 Transfer is permitted “however wrong the plaintiff may have been in filing his case as
5 to venue, whether the court in which it was filed had personal jurisdiction over the
6 defendants or not.” *Goldawr, Inc. v. Heiman*, 369 U.S. 463, 466 (1962). A district
7 court may transfer a case if: “(1) the transferee court would have been able to exercise
8 its jurisdiction on the date the action was misfiled; (2) the transferor court lacks
9 jurisdiction; and (3) the transfer serves the interest of justice.” *Garcia de Rincon v.*
10 *Dep’t of Homeland Sec.*, 539 F.3d 1133, 1140 (9th Cir. 2008); *see also* 28 U.S.C. §
11 1631 (“Transfer to cure want of jurisdiction”). “Thus, one requirement in approving
12 transfer is a showing that the transferee court has jurisdiction over the action to be
13 transferred.” *Carpenter*, 2015 WL 1893146, at *6 (citing *Garcia de Rincon*, 539 F.3d
14 at 1140).

15 Presuming this Court lacks jurisdiction, CanAm requests this case be transferred
16 to the Western District of Missouri, where the parallel Missouri Action is currently
17 pending. CanAm argues that it satisfies each requirement for the Court to properly
18 transfer this case. (Def.’s Mot. 8:4–9:2.) Ocean and USPN respond that “there has
19 been no showing that this action could have been brought in Missouri originally,”
20 focusing on the jurisdictional requirements of the venue-transfer analysis under 28
21 U.S.C. § 1631. (Pls.’ Opp’n 17:17–18:26.) They do not address whether transfer
22 would serve the interest of justice, effectively conceding that point. (*See id.*)

23 Based on the analysis above, this Court lacks personal jurisdiction over CanAm.
24 And there is ample evidence before the Court that the Western District of Missouri
25 would have been able to exercise its jurisdiction at the time this action was filed,
26 particularly the fact that CanAm has a manufacturing facility in Milan, Missouri that
27 also houses its corporate offices (Connolly Decl. ¶ 2) and the Western District of
28 Missouri has already exercised jurisdiction in the parallel action brought by CanAm

1 against Ocean (ECF No. 9). The only remaining unresolved issue would have been
2 whether transfer serves the interest of justice, but Ocean and USPN effectively concede
3 that point. Therefore, the Court finds that transfer to the Western District of Missouri
4 is appropriate. *See* 28 U.S.C. § 1631; *Garcia de Rincon*, 539 F.3d at 1140.


5
6 **IV. CONCLUSION & ORDER**

7 In light of the foregoing, the Court **GRANTS** CanAm's motion to dismiss for
8 lack of personal jurisdiction, and in lieu of dismissal, the Court **ORDERS** the Clerk of
9 the Court to transfer this action to the Western District of Missouri to cure want of
10 jurisdiction under 28 U.S.C. § 1631. (ECF No. 2.)

11 In exercising its discretion, the Court also **DENIES** Ocean and USPN's request
12 for leave to conduct jurisdictional discovery primarily because they rely on speculation
13 based mostly on what "Canam curiously has failed to allege." *See Boschetto*, 539 F.3d
14 at 1020 (holding that district court did not abuse its discretion in denying request for
15 discovery that was based on "little more than a hunch that it might yield jurisdictionally
16 relevant facts"); *Butcher's Union Local No. 498, United Food & Commercial Workers*
17 *v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (holding that district court did not
18 abuse its discretion by refusing jurisdictional discovery where the plaintiffs "state only
19 that they 'believe' that discovery will enable them to demonstrate sufficient California
20 business contacts to establish the court's personal jurisdiction").

21 **IT IS SO ORDERED.**

22
23 **DATED: May 7, 2015**

24 
25 **Hon. Cynthia Bashant**
26 **United States District Judge**
27
28